

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1471
SPONSOR(S): Attkisson
TIED BILLS:

Florida Energy Diversity and Efficiency Act
IDEN./SIM. BILLS: SB 2494

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee		Holt	Holt
2) Fiscal Council			
3) Commerce Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

HB1471 creates the "Florida Energy Diversity and Efficiency Act," to govern the siting of new nuclear power plants. The Act is modeled after the existing Power Plant Siting Act, Chapter 403.509, F.S.

The bill streamlines the siting process while ensuring public input. The legislation also allows the Governor and Cabinet, sitting as the Siting Board, to assess the need and approve/deny the plant.

The bill consolidates all issues into one hearing before an Administrative Law Judge (local land use hearing is consolidated into ALJ hearing)

The definitions for "associated facilities" and "associated transmission lines," are broadened to create a single forum for "one-stop" permitting of all transmission issues. The bill also defines the scope of intervention in transmission line siting procedures in an effort to eliminate unnecessary delays.

Public Service Commission's (PSC) need determination is also included in the bill, and the bill imposes a 135-day schedule on the PSC for issuing a need order. Issues are defined that the PSC can address in the need proceeding and requires the PSC to grant the utility's petition upon a finding that the plant will (1) provide needed baseload capacity; (2) enhance the reliability of production in the state by improving fuel diversity and lessening reliance on natural gas and oil; (3) mitigate air emissions and; (4) provide the most cost-effective – though not necessarily the least-cost –generating alternative. Further, the bill excludes nuclear plants from the PSC bid rule.

Other provisions provide that once a need petition is granted, costs incurred shall not be subject to challenge unless and only to the extent the PSC finds, based on clear and convincing evidence offered at a hearing initiated by the PSC, that the utility was imprudent in incurring costs significantly in excess of the initial, non-binding estimate provided by the utility.

The fiscal impact is unknown at this time.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain Public Security: Through the further diversification of the State fuel supply, the siting of new nuclear generation may lessen the dependence on any one particular fuel, in order to ensure power reliability.

B. EFFECT OF PROPOSED CHANGES:

Background

Department of Environmental Protection

Certification of nuclear fueled, steam turbine, electric power generation facilities is presently done under the authority of the Electrical Power Plant Siting Act (PPSA), ss. 403.501-403.518 and ss. 403.519, F.S. The PPSA is a centralized, coordinated licensing process. This process preempts all state, regional, and local permits and other authorizations that have jurisdiction for regulation and siting of industrial facilities. All affected agencies participate as parties to the process and all non-procedural requirements of the preempted agencies are included in the certification as conditions of certification.

The PPSA is highly procedural and includes a determination of need by the Public Service Commission (PSC) ss. 403.519, F.S., a mandatory land use hearing and a mandatory certification hearing by an administrative law judge, with ultimate approval/denial authority vested in the Siting Board (Governor and Cabinet). The DEP coordinates the process.

An administrative law judge is involved from the beginning, and the process is handled as litigation and requires the exchange of most documents as legal filings. Persons wishing to become formally involved in the process, for the most part, must become parties to the proceeding. Additional opportunities exist for public comment.

Public Service Commission

A precedent condition for a electrical project to proceed under the PPSA (s. 403.508(3)) is an affirmative determination of plant need from the PSC. In implementing the requirements of s. 403.508(3), the PSC has established rules controlling the information to be included in a petition for need and the schedule of administrative events in order to meet the requirements of the PPSA. Section 403.519, F.S., requires the PSC, in considering whether to approve a need petition, to take into account several criteria. These criteria include the need for electric system reliability and integrity; the need for adequate electricity at a reasonable cost; whether the proposed plant is the most cost-effective alternative available; available conservation measures which mitigate the need for the plant; and other matters within the PSC's jurisdiction.

In determining whether the proposed plant is the most cost-effective alternative, the PSC established Rule 25-22.082, F.A.C. Selection of Generating Capacity. This rule requires utilities to request bids for alternatives to its proposed plant in order to meet the identified need for power. The effect of the rule is to provide the PSC with more complete information about potential alternatives to the proposed power plant to use as a consideration in its deliberation of the project's cost-effectiveness.

Federal Legislation

The Energy Policy Act of 2005 provides significant financial incentives that may inure to the benefit of Florida consumers. These incentives, however, are limited to the first 6,000 megawatts of new nuclear plants constructed. To date, utilities in a number of other states have announced their intent to build new nuclear plants.

EFFECT OF PROPOSED CHANGES

Section 1. The act may be cited as the Florida Energy Diversity and Efficiency Act.

Section 2. The bill provides legislative intent declaring that it is in the public interest and critical to the health, prosperity, and general welfare of the state and its citizens to promote the expansion of nuclear generation by the siting of new nuclear power plants and associated facilities within the state.

Section 3. Definitions: The bill provides definitions as used in this act. The definitions are adapted largely from those used in the PPSA, with exceptions for using the term “nuclear” in lieu of “electric.” Noteworthy, however, are the following definitions which are expanded from the PPSA for use in the act:

(4) "Applicant" means any electric utility as defined under s. 366.8255(1)(a)¹, Florida Statutes, city, town, county, public utility district, electric cooperative, or joint operating agency, or combination thereof, authorized under Florida law to engage in the business of generating, transmitting, or distributing electric energy to retail electric customers in the state.

The regulatory approval of a nuclear plant in the bill only applies to retail serving utilities as defined in s. 366.8255(10)(a). This allows for the inclusion of municipal and rural electric utilities. Historically, no individual Florida municipal or rural electric cooperative has sought to construct a nuclear unit. However, joint ownership arrangements could exist, and these entities as a result could have ownership shares of future nuclear plants.

(21) "Nuclear power plant" means, for the purpose of certification, any electrical generating facility using any process involving nuclear materials, fuels, or processes and, at the applicant's election, includes associated facilities and associated transmission lines.

The definition includes, at the applicant's option, associated transmission lines which encompass not only lines and substations directly interconnected to nuclear plants, but any transmission upgrades or expansions on the state's transmission system. As a result, any grid-wide upgrades required to reliably handle the electric output of the proposed nuclear plant would be considered as part of the licensing process required under this act.

Three concerns were raised in this regard to the definition: 1) definition goes beyond the current definition of associated facilities contained in the PPSA. 2) references to the notice provisions and request for hearings use the term “nuclear power plant” and make no mention of “associated facilities. 3) in order for the Siting Board to comprehensively balance the cost and benefits of a new nuclear power plant, all directly associated facilities should be included in the application and evaluated by the reporting agencies, and should not be at the applicant's option.

The bill deletes the definitions used in PPSA for “person” and “sufficiency.”

Section 4. Department of Environmental Protection; powers and duties enumerated: Powers are designated to the DEP to adopt rules to implement the act provisions and conduct various studies. However, the concern was raised the bill provides DEP with no authority to issue final orders if not hearing is requested.

Section 5. Applicability and certification: Provisions provide that the act applies exclusively to any new nuclear power plant and to any expansion in steam-generation capacity of any existing nuclear power plant. Any new construction and capacity expansion occurring after the effective date of this requires certification under this act. The bill provides an exemption from modification of certification for

¹ (1) As used in this section, the term:

(a) “Electric utility” or “utility” means any investor-owned electric utility that owns, maintains, or operates an electric generation, transmission, or distribution system within the State of Florida and that is regulated under this chapter.

changes to fuel make-up that result in no increase of generation capacity. The processing of any federally delegated or approved program shall be processed within the time constraints of the certification review.

Section 6. Distribution of application; schedules: The bill provides that:

- within 7 days after an site certification application (SCA) is filed, the DEP shall provide the applicant and the Division of Administrative Hearings (DOAH) the names and addresses of affected parties.
- within 7 days after an SCA is determined complete, the DEP distributes the processing schedules. (According to DEP, this could be 66 days after receipt of a SCA. See the correlating note in s. 8 regarding 45 days after receipt for a SCA completeness determination.)
- within 7 days after DEP provides the names and addresses of the affected parties, the applicant distributes copies of the application to all affected parties.

Section 7. Appointment of administrative law judge: The bill provides that:

- within 7 days of receipt to the SCA, the DEP request DOAH to designate and administrative law judge (ALJ).
- within 7 days of receipt of the DEP request, DOAH appoints an ALJ.

Section 8. Determination of completeness: The bill provides that:

- within 30 days of distribution of the SAC, agencies are to submit recommendations on completion to DEP
- within 45 days of distribution, the DEP submits its statement on completeness with the applicant and DOAH. (The bill combines at this point the determination of completeness and the determination of sufficiency which are separate concepts in PPSA).

If a finding of incompleteness is declared, the applicant may: 1) withdraw SCA or amendment, or 2) within forty days or such later date as authorized by department rules, file additional information (DEP then has thirty days to issue a second completeness finding), or 3) ask for additional time to file additional information, or 4) ask for an administrative hearing. If a hearing is requested, the request must be filed within fifteen days. If a hearing is requested, the request must be filed within fifteen days. The hearing shall be within twenty-one days of request and ALJ's decision to be within ten days of end of hearing and all processing time-clocks are tolled until the ALJ's decision.

Section 9. Preliminary statements of issues, reports, and studies: Affected agencies within 45 days of SCA distribution are to file preliminary statement of issues. Statutory agencies, or any other agency, must submit agency reports within 60 days of completeness. All proposed conditions of certification shall specify specific statute, rule, or ordinance which authorizes the condition. No condition may be included in the conditions of certification without such specific authorization.

DEP issues a written analysis 85 days after application determined complete. Analysis contains statement of compliance with agency rules, copies of studies and reports, comments from other agencies or persons, DEP recommendations on disposition of the application, variances or exemptions and exceptions, and DEP's recommendation of federal permits.

Section 10. Notice of department recommendation, petition for certification hearing: DEP and the applicant shall publish notice of DEP's recommendation on the SCA and any associated facilities in newspapers of the affected areas. (In correlation with section 4, if no hearing is requested, DEP's believes it final order would not be challengeable).

Section 11. Certification proceedings, parties, participants: If any party or person whose substantial interest are affected files a petition for a certification hearing within 14 days after DEP's SCA recommendation. It is unclear the definition of "person" since the term was deleted from the definitions.

A certification hearing shall be held by the designated ALJ no later than 260 days from the date the application is filed with DEP. An affirmative determination of need by the PSC shall be a condition precedent to conducting a certification hearing.

Except when good cause is demonstrated, the failure of any agency to submit a preliminary statement of issues or a report or proper submission shall not be grounds for the alteration of any time limitation in the act. Moreover, neither the failure to submit a preliminary statement of issues, or a report, nor the inadequacy of the preliminary statement of issues or report shall be grounds to deny or condition certification.

Further, the bill outlines the parities to the certification proceeding.

Section 12. Final disposition of application: If no certification hearing is held, or within 60 days of ALJ's recommended order following a certification hearing, the SB must approve or deny issuance of a certification by written order. If denied, the reasons for denial are to also be included in the order. Criteria are provided upon which the SB is to consider whether an SCA is to approved in whole, with modifications or conditions, or denied. If certification is denied, the SB is required to set forth in writing actions needed to secure approval. Concerns were raised in this section concerning: 1) that the bill does not contemplate fatal error that cannot be fixed; 2) that only parties to the proceeding may appear before the SB thereby creating a situation that is contrary to Government in the Sunshine; 3) that local comprehensive plans are to be overridden by the SB to allow the project at the selected site.

Section 13. Alteration of time limits: The provisions in this section are identical to the PPSA.

Section 14. Superseded laws, regulations, and certification power:

(1) If any provision of this act is in conflict with any other provision, limitation, or restriction under any law, rule, regulation, or ordinance of this state or any political subdivision, municipality, or agency, this act shall govern and control, and such law, rule, regulation, or ordinance shall be deemed superseded for the purposes of this act.

(2) The state hereby preempts the siting, regulation, and certification of nuclear power plant sites and nuclear power plants as defined in this act.

(3) The board may adopt reasonable procedural rules pursuant to ss. 120.536(1) and 120.54 to carry out its duties under this act and to give effect to the legislative intent that this act is to provide an efficient, simplified, centrally coordinated, one-stop licensing process.

Section 15. Effect of certification: The majority of these provisions model the PPSA. However, concern was raised that agencies have 60 days after completeness to notify an applicant that a variance, exemption or other relief is needed. This is the same date agency reports are due. It appears the bill offers no response time to the applicant, and no time is given to DEP to include the additional information into the DEP report.

Section 16. Notice; costs of proceeding: The provisions of this section model the PPSA.

Section 17. Revocation or suspension of certification: The provisions of this section model the PPSA.

Section 18. Review: The bill provides that proceedings under this act shall be subject to judicial review in the Florida Supreme Court. Separate appeals of the certification and federally delegated or approved permit programs shall be consolidated for purposes of judicial review. Review on appeal shall be based solely on the record before the board and briefs to the court and shall be limited to determining whether the certification order conforms to the constitution and laws of this state and the United States and is within the authority of the board under this act. The Supreme Court shall expeditiously as practicable review the case. Concern has been raised regarding this provision creating an avenue of appeal contrary to the requirements of section 10.

Section 19. Enforcement of compliance: The provisions of this section model the PPSA.

Section 20. Availability of information: The provisions of this section model the PPSA.

Section 21. Modification of a certificate: The majority of this section models the PPSA. The DEP proposed clarifying the language in regard the initial request to specify who makes it and how, as well as what is needed to irely accomplish a modification.

Section 22. Supplemental applications for sites certified for ultimate capacity: The majority of this provision models the PPSA.

Section 23. Fees; disposition: The bill provides fee provisions similar to the PPSA. However, the DEP noted that the fees are too low, and that DOAH receives it full fee even if there is no hearing.

Section 24. Exclusive forum for determination of need: The provisions of this section are similar to the PPSA. The PSC is the sole forum for determination of electrical need. Section 403.519 reads in part:

In making its determination, the commission shall take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available.

The bill proposes new language is s. (2)(a) that reads:

In making its determination to either grant or deny a petition for determination of need, the commission shall consider the need for electric system reliability and integrity, including fuel diversity, the need for base-load generating capacity, and the need for adequate electricity at a reasonable cost.

According to the PSC, it has and can examined fuel diversity and type of generating plant that is being requested as part of its consideration of a ed petition. The bill however makes fuel diversity and base-load generating capacity specific criteria.

Section (2)(c) has outlined that the Commission “shall grant” a petition for need if it finds that the proposed nuclear plant will: 1) provide needed baseload capacity, 2) enhance the reliability of electric power within the state and reduce Florida’s dependence on fuel oil and natural gas, and 3) provide a “cost-effective, although not necessarily the least cost source of power, taking into account the need to improve the balance of fuel diversity, reduce Florida’s dependence on fuel oil and natural gas, mitigate air emission effects within the state, and contribute to the long-term stability and reliability of the electric grid.”

However, the PSC has limited expertise but no jurisdiction as it relates to mitigation of air impacts within the state. It does however consider environmental costs associated with proposed power plants.

Section (3) exempts nuclear plants from the FPSC Rule 25-22.082, Selection of Generating Capacity. This rule requires utilities prior to requesting a determination of need to solicit bids from alternative providers of generating capacity. The effect of the rule is to provide the PSC with more complete information about potential alternatives to the proposed power plant to use as a consideration in its deliberation of the project’s cost-effectiveness. Requirements of the bid rule can be waived upon a showing by a public utility and a finding by the PSC “that a proposal not in compliance with this rule’s provisions will likely result in a lower cost supply of electricity to the utility’s general body of ratepayers, increase the reliable supply of electricity to the utility’s general body of ratepayers, or otherwise will

serve the public welfare.” The exemption of nuclear units from this process would reduce the amount of time necessary to proceed with a need hearing.

Section (4) addresses procedural issues. First, the PSC’s final order will serve as the report that must be submitted to the DEP under Section 9(2)(a)2. After consideration of any Motions for Reconsideration, a party may appeal the final PSC’s order to the Florida Supreme Court. Any such appeals must be based on the record before the PSC and the issues to be considered are limited to whether the order “conforms to the constitution and laws of this state and the United States and is within the authority of the Commission under this section.” It also directs the Supreme Court to hear such appeals as “expeditiously as possible”.

Section (5) outlines cost recovery with specific direction that once the need determination has been granted, the utility has the right to recover any costs associated with “siting, design, licensing, or construction of the plant...” The only mechanism for permitting any disallowance of costs would be based on the PSC finding of imprudence in the utility’s “siting, licensing and construction” of the plant. According to the PSC, it currently uses a standard to determine prudence based on a “preponderance of the evidence.” This bill creates a more difficult “clear and convincing” evidence standard that must be applied by the in determining what expenditures could be deemed imprudent. Section 24(5) also states that imprudence may not be found for any costs outside the utility’s control and then proceeds to enumerate a list of such events “including, but not limited to” delays in getting necessary permits, litigation delays, construction and equipment costs, or changes in laws or regulations.

Under traditional ratemaking practice, expenditures for any pre-operational costs to build power plants would accrue in a regulatory account and when the plant becomes operational, all costs in this account would become part of the total plant cost that could be placed in rate. PSC practice does allow public utilities to request early cash flows to occur for power plant construction costs upon a showing that the utility would suffer financial hardship without such early recovery of costs.

Further, the PSC points out that while it is unlikely that any municipal or cooperative utility would initiate a need determination for a nuclear unit, the provisions of this act would appear to apply to them. As a matter of administrative review, all of the provisions of this bill could appropriately apply to municipal or cooperative utilities, except for the cost recovery provisions contained in 24(5). The PSC does not have any authority over how and what time period municipal or cooperative utilities finance power plants and recovery pre and post construction costs.

Section 25. This act shall take effect upon becoming law.

C. SECTION DIRECTORY:

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The fiscal impact is yet to be determined.

2. Expenditures:

The fiscal impact is yet to be determined.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The fiscal impact is yet to be determined.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rulemaking authority is granted to the DEP to implement the provisions of the act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the DEP, the act would apply to any electric power generation that is fueled by a nuclear process. Whereas the PPSA only applies to steam turbine electric power generation (including nuclear fueled). However, all nuclear fueled electric power generation is by steam turbine.

The deletion of the reference to nuclear fuels in the PPSA does not relieve a generation facility producing steam turbine generated electric power from the need for certification under the PPSA. This means two certifications would be required: one for the steam turbine generation (PPSA), and one for the use of a nuclear fuel (EDEA). Two certifications require two fees. Since the two applications would be virtually identical, all other processes could carry forward as one, however, all official documents would have to be produced and processed separately for each act.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES